

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 8:03-cr-77-T-30TBM

SAMI AMIN AL-ARIAN,  
SAMEEH HAMMOUDEH,  
GHASSEN ZAYED BALLUT,  
and HATIM NAJI FARIZ,

Defendants.

/

**ORDER**

THIS MATTER is before the court on the following motions:

- 1) Defendant Sami Amin Al-Arian's **Motion for Bill of Particulars** (Doc. 248), **Amended Motion for Bill of Particulars** (Doc. 272), and **Addendum to Amended Motion for Bill of Particulars** (Doc. 287);<sup>1</sup>
- 2) Defendant Sameeh Hammoudeh's **Motion Bill of Particulars** (Doc. 312) and **Amended Defendant (sic) Sameeh Hammoudeh's Motion Bill of Particulars** (Doc. 332);<sup>2</sup>
- 3) Defendant Ghassan Ballut's **Motion for Bill of Particulars and Memorandum of Law** (Doc. 193),<sup>3</sup> Defendant Ghassan Ballut's **Motion to Adopt Defendant Hatim Fariz's Motion for Bill of Particulars** (Doc. 296), and Defendant Ghassan Ballut's **Motion to**

<sup>1</sup>Defendant Al-Arian makes 377 separate demands for particulars.

<sup>2</sup>Defendant Hammoudeh makes 93 separate demands for particulars, which are nearly identical to those made by Defendant Al-Arian.

<sup>3</sup>Defendant Ballut makes 11 separate demands for particulars.

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**Adopt Defendant Sameeh Hammoudeh's Motion for Bill of Particulars (Doc. 321);<sup>4</sup> and**

**4) Defendant Hatim Naji Fariz's Motion for Bill of Particulars (Doc. 252).<sup>5</sup>**

By their motions, Defendants seek an Order requiring the Government to furnish particulars regarding the fifty-count Indictment in this case. In support, Defendants contend that such additional information is necessary to their preparation for trial and the avoidance of double jeopardy. In its consolidated response in opposition (Doc. 341), the Government asserts that Defendants' motions inappropriately seek discovery of its evidence for trial and are unnecessary to the avoidance of undue surprise or double jeopardy given the specificity of the allegations in the Indictment and quantity of information to be produced in discovery.

Under Rule 7(f) of the Federal Rules of Criminal Procedure, the court may direct the government to file a bill of particulars. Fed. R. Crim. P. 7(f). The function of a bill of particulars is to inform the accused of the charge(s) with sufficient precision to reduce surprise at trial and to plead his conviction or acquittal in the event of a subsequent prosecution for the same offense. *United States v. Anderson*, 799 F.2d 1438, 1441 (11th Cir. 1986); *United States v. Cole*, 755 F.2d 748, 760 (11th Cir. 1985). It is not the function of a bill of particulars to provide generalized discovery. *United States v. Warren*, 772 F.2d 827, 837 (11th Cir. 1985); *United States v. Colson*, 662 F.2d 1389, 1391 (11th Cir. 1981). It is also not a function of a bill of particulars to compel the government to provide the essential facts regarding the existence and formation of a conspiracy. *United States v. Rosenthal*, 793 F.2d 1214, 1227

<sup>4</sup>Defendant Ballut's motions to adopt (Docs. 296, 321) are **GRANTED**.

<sup>5</sup>Defendant Fariz makes 99 separate demands for particulars.

(11th Cir. 1986). Similarly, all of the overt acts that might be proven at trial are not required to be disclosed in a bill of particulars. Id.

A bill of particulars may, however, be “a proper procedure for discovering the names of unindicted coconspirators who the government plans to use as witnesses.” *United States v. Barrentine*, 591 F.2d 1069, 1077 (5th Cir. 1979).<sup>6</sup> Courts in this circuit have granted motions for bill of particulars insofar as they seek the identity of unindicted coconspirators, particularly when the information is not otherwise known to the defendants. See *Anderson*, 799 F.2d at 1439; Cole, 755 F.2d at 760; Warren, 772 F.2d at 837. Additionally, while a bill of particulars typically is not warranted if the information sought is already available through other sources such as the indictment or discovery, see *Rosenthal*, 793 F.2d at 1227, there may be instances in which the government’s disclosure of a large volume of material is precisely what necessitates a bill of particulars, see *United States v. Bin Laden*, 92 F. Supp. 2d 225, 234 (S.D.N.Y. 2000) (citing *United States v. Bortnovsky*, 820 F.2d 572, 575 (2d Cir. 1987)). In cases that are exceedingly complex, charge violations that span continents and decades, and contain voluminous discovery, the granting of a bill of particulars may be warranted to narrow the defendant’s investigation, expedite preparation for trial, and allow a more efficient and expeditious resolution of the matter, particularly where the defendant is subject to lengthy pre-trial detention. *Bin Laden*, 92 F. Supp. 2d at 234-35.

The court has reviewed each of the motions, the Indictment, and has considered the discovery disclosures made by the Government. The court finds that most of the matters

<sup>6</sup>In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

sought by the Defendants are unnecessary for their fair notice of the charges or their avoidance of successive prosecutions. Despite the Defendants' protests to the contrary, the Indictment in this case is highly specific as to the factual allegations supporting each count and, for the most part, clearly exposes the Government's theory as to each Defendant's involvement in the alleged criminal activity. The sheer number of particulars requested by Mssrs. Al-Arian, Hammoudeh, and Fariz and the nature of the requests only serve to underscore that these Defendants use the motion for discovery purposes rather than as a vehicle to protect against insufficient notice or double jeopardy.<sup>7</sup> Nevertheless, considering the breadth of the allegations and the voluminous discovery that the Defendants must review, some additional particulars appear appropriate in the interests of justice and in order to expedite the Defendants' investigation of the charges against each of them.

Accordingly, the Defendants' motions (Docs. 193, 252, 272, 332) are **GRANTED** to the following extent:

1) Regarding Count One, the Government shall identify each of the unindicted coconspirators numbered one through twelve.<sup>8</sup> The disclosure and use of the identities of

<sup>7</sup>To illustrate, these Defendants seek mostly the further explication of the specific allegations in the Indictment; additional date, time, and place disclosures; and the identity of witnesses or evidence. While such specific information would no doubt be useful to the Defendants, except as discussed herein, the allegations in the Indictment are not so vague or overbroad as to leave any of the Defendants in need of additional allegations by way of a bill of particulars for their fair notice or the avoidance of double jeopardy, and Rule 16 does not require the disclosure of that information.

<sup>8</sup>The Government urges that the Defendants have the capability to investigate the overt acts and discover the identity of these numbered, unindicted coconspirators. In some instances this is perhaps correct. However, there are no less than 256 overt acts that the Defendants must investigate in connection with Count One alone. In total, the Government alleges four wide-ranging conspiracy counts covering a time span of nearly fifteen years and acts in the United States, Great Britain, Israel, and elsewhere in the Middle East. Discovery in

these unindicted coconspirators shall be governed by the protective order entered in connection with the disclosure of the FISA intercepted communications. See (Doc. 270).

Further, to the extent that the Government or its agents know the identity of the individual(s) with whom Defendant Fariz had conversations as described in overt acts 236 or 253, or about whom Defendant Fariz and Defendant Ballut spoke as described in overt acts 240 and 247, it shall disclose such.<sup>9</sup>

2) Regarding Count Two, the Defendants are accused of conspiring with each other and others to murder and maim persons outside the United States. By the overt acts incorporated in this count, coconspirators “associated with PIJ” allegedly injured or killed numerous individuals on several occasions at specified locations in Israel. While the locations of these events are alleged in the Indictment, neither the identities of the alleged

this case is modestly described as “voluminous.” It includes an estimated twenty thousand hours of wire-intercepted conversations pursuant to the FISA, in addition to thousands of pages of documents or bits of data on seized computers. The Government has elsewhere disclosed the identity of unindicted coconspirator number 12 and offers no basis why the identity of the other eleven unindicted coconspirators should not likewise be revealed so as to slightly narrow the investigation necessary to each of these Defendants. See Bin Laden, 92 F. Supp. 2d at 234-35.

<sup>9</sup>On April 7, 2003, the Government filed notice that the conversation described in overt act 253 of Count One incorrectly identified Defendant Abd Al Aziz Awda as the person with whom Defendant Fariz had a telephone call on November 10, 2002. The notice also stated that any reference to Abd Al Aziz Awda in overt acts 236, 240, and 247 was therefore “suspect.” No other identification of the individual was made except that he was another “PIJ activist.” See (Doc. 71). Significantly, these overt acts are incorporated by reference into the other conspiracy counts (Counts Two, Three, and Four), against which all the Defendants must defend. Additionally, these same overt acts serve as the basis of substantive violations in Counts Thirty-Five, Thirty-Seven, Forty-One, and Forty-Three. Thus, the court finds that a bill of particulars revealing these names will serve to clear up the “suspicion” conceded by the Government and will narrow the focus of all the Defendants’ investigation and prevent prejudicial surprise at trial.

coconspirators committing the acts nor the basis for the Government's allegations that they were "associated with PIJ" is clearly demonstrated by the allegations.

The Defendants are not themselves accused of committing any of the violent acts, and all of the alleged murders occurred in Israel. The Government has disclosed that it possesses numerous documents concerning these events in Israel and that it intends to disclose them to the Defendants.<sup>10</sup> However, as of this date it has not done so. Investigation by the Defendants of these occurrences in Israel obviously can not be accomplished without great difficulty and considerable expense.<sup>11</sup> While the court concludes that the allegations in this count are adequate to give the Defendants fair notice of the charge and the ability to defend against a successive prosecution, given the volume of other discovery that must be reviewed by the Defendants and the difficulties inherent in any investigation in Israel, considerations of fairness and the Defendants' need for effective investigation to adequately prepare for trial dictate that further disclosure by the Government be made as to this count. Accordingly, within thirty (30) days of the date of this Order, the Government shall make available for inspection and copying all investigative materials related to the acts of violence in Israel alleged in the Indictment or otherwise show cause why these materials can not be disclosed. To the extent that the identities of the coconspirators "associated with PIJ" are not otherwise

<sup>10</sup>On the basis of what the Government has said about this material, Rule 16 would not require its disclosure. Thus, the disclosure must either be ordered by the court based on the extraordinary circumstances of this case or made voluntarily by the Government.

<sup>11</sup>Two of the Defendants remain in detention under highly restrictive conditions. Two other Defendants are at liberty on bond, but have been declared indigent for purposes of defense in this case. Thus, there are financial and logistical considerations that serve to complicate any investigation by the Defendants in Israel.

revealed in this material and to the extent that the Government or its agents know the identity of the coconspirators so “associated with PIJ,” their identities shall be disclosed as well.<sup>12</sup>

3) Regarding Count Three, the Defendants are accused of participating in a conspiracy to provide material support and resources to the PIJ *beginning in or about 1988* and continuing to the date of the Indictment. Initially, as urged by the Defendants, the temporal scope of this alleged conspiracy appears troubling given the particular circumstances of this case. However, the matter appears to have been particularized satisfactorily through pronouncements made of record by the Government in regards to other matters. Specifically, the Government has narrowed somewhat the scope of the conspiracy alleged in this count by its responses to certain of the Defendants’ motions to dismiss. See (Docs. 345, 347). By way of those responses, the Government asserted that, while acts that occurred prior to 1997 (the year in which the PIJ was designated a foreign terrorist organization (hereinafter “FTO”)) are set forth in the “Means and Methods Section” of this count, only overt acts occurring after the 1997 FTO designation are explicitly incorporated in this count.<sup>13</sup> Consequently, the court finds that because the Government relies on overt acts that occurred after the 1997 FTO designation for the alleged violations, more particularized information regarding the beginning

<sup>12</sup>Apart from the persuasive authority in Bin Laden, the court’s authority for such a discretionary order may be found in Rule 16(d). See *United States v. Cannone*, 528 F.2d 296, 298-99 (2d Cir. 1975); but cf. *United States v. Baggett*, 455 F.2d 476 (5th Cir. 1972); see also *United States v. Campagnuolo*, 592 F.2d 852, 857 n.2 (5th Cir. 1979); *United States v. Carrigan*, 804 F.2d 599, 602-03 (10th Cir. 1986).

<sup>13</sup>As stated above, Count Three charges a violation of 18 U.S.C. § 2339B, which provides that it is a violation of law to knowingly conspire with others to provide material support and resources to a designated FTO. On October 7, 1997, the Secretary of State, pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, 18 U.S.C. § 219, designated the PIJ as a FTO.

date of this alleged conspiracy or the overt acts in support thereof is not needed to reduce surprise at trial or to avoid successive prosecutions.<sup>14</sup>

4) Regarding Counts Five through Forty-Four, the Government purports to allege substantive violations of 18 U.S.C. §1952(a)(2)and (3). By these allegations, the various Defendants employed telephones or facsimiles in interstate and/or foreign commerce with the intent to 1) “commit any crime of violence to further” the specified unlawful activity of extortion or money laundering, and 2) “otherwise promote, manage, establish, carry on and facilitate the promotion, management, establishment, and carrying on of” the unlawful activity of extortion and money laundering, “. . . and thereafter did promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of (the unlawful activity of extortion and money laundering).” See (Doc. 1 at 100.) Additionally, the Government has incorporated by reference certain of the telephone calls and facsimile transmissions alleged as overt acts in Count One into these counts. While further particulars or explication of each of these counts would undoubtedly prove useful to the Defendants, the

<sup>14</sup>This count incorporates certain overt acts alleged in Count One, including allegations of murders in Israel. Under 18 U.S.C. § 2339B, the punishment is enhanced if the provision of material support or the conspiracy to do so results in the death of any person. Yet, there is no specific allegation here that the conspiracy resulted in the death of any person. Thus, it appears that the Government intends only to charge a fifteen (15) year offense by these allegations. At the bond hearing on March 20, 2003, the Government stated as much. In respect to Defendant Al-Arian, the Government stated, “There’s a conspiracy to provide material support, which is a 15-year count.” (Doc. 63 at 9). As to Defendant Ballut, the Government stated, “As is Mr. Al-Arian is, he’s charged in Counts Three and Four with conspiracy to provide material support to crime of violence as the racketeering is (sic), and . . .” Id. at 39. As to Defendant Hammoudeh, the Government asserted, “Counts Three and Four, like the other Defendants, . . . 15 and 5-year counts.” Id. at 48. Lastly, with respect to Defendant Fariz, the Government stated, “Count Three—Counts Three and Four, just like the other Defendants, . . .” Id. at 52. Thus, the Government has clarified any inconsistency which might be discerned from a reading of these allegations and no further clarification need be made on this motion.



court can not conclude that the allegations are so general that a bill of particulars is warranted, especially in light of other pleadings filed by the Government in this cause. For example, in its consolidated response to certain motions to dismiss, the Government reasserted that the “unlawful activity” at issue in these counts is extortion or money laundering. See (Doc. 347 at 27). The Government further asserted that the charged language of “any crime of violence” refers to the alleged acts of murder that are referenced in Count One. Id. Thus, the Government explained that, “[w]hen the whole Indictment is read in a common sense fashion, the Indictment supplies plenty of information to the Defendant about the ‘nature and cause of the accusations’ to allow him to prepare his defense.”<sup>15</sup> Id. The court agrees.

However, the court again notes some confusion in the allegations on the matter of the actual offense charged, namely, whether the Government alleges an offense punishable by a maximum of five (5) years’ imprisonment or one punishable by twenty (20) years’ imprisonment. The Government has claimed that the offenses are twenty (20) year offenses. See (Doc. 63 at 9, 39, 48, 52). While the Government alleges in the Indictment the intent language of both § 1952(a)(2) and § 1952(a)(3), a plain reading of the Indictment would appear to support only a violation of § 1952(3), a five (5) year offense, in light of the “overt act” element of the offense as alleged in this Indictment (*“and thereafter did promote, manage, establish, carry on and facilitate the promotion, management, establishment and*

<sup>15</sup>In that same motion, the Government also addressed in passing the particulars of which Defendant Fariz sought with respect to the Travel Act Counts. See (Doc. 347 at 28-29). Specifically, the Government stated that the factual allegations in Counts Thirty-Five, Thirty-Seven, Forty-One and Forty-Three “allege at least inferentially that Defendants Fariz and Ballut were discussing the secretive transfer of money from the United States to a place outside the United States to support PIJ activities, which, if proven at trial, is money laundering, . . .” Id.

*carrying on of said unlawful activity*”). Compare (Doc. 1 at 100) with 18 U.S.C. § 1952(a)(2) and (3). In any event, this appears to be a matter better left for resolution by the trial judge either on the motions to dismiss or at trial.

Accordingly, it is **ORDERED** that the Defendants’ motions (Docs. 193, 252, 272, 332) are **GRANTED in part** to the extent set forth in this Order.<sup>16</sup> In all other aspects, the motions are **DENIED**.

**Done and Ordered** in Tampa, Florida, this 21st day of January 2004.

  
THOMAS B. McCOUN III  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:  
United States District Judge  
Counsel of Record

<sup>16</sup>Defendant Al-Arian seeks four particulars with respect to Count Forty-Five and eleven particulars with respect to Count Forty-Seven. See (Doc. 272, ¶¶ 361-75). The court finds that the Indictment adequately advises Defendant Al-Arian of those charges, and no particulars are warranted.

F I L E   C O P Y

Date Printed: 01/21/2004

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